IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SANDRA BORKON, Plaintiff,	:	
v.	:	CIVIL ACTION
FIRST UNION NATIONAL BANK, Successor-in-Interest by Merger to CORESTATES BANK, N.A., MERIDIAN BANK, NEW JERSEY NATIONAL BANK, and CHERRY HILL NATIONAL BANK Defendant.	:	NO. 00-2850

Memorandum and Order

YOHN, J. September ___, 2001

Presently before the court is the motion of defendant First Union National Bank ("the Bank") for summary judgment against plaintiff Sandra Borkon. For the reasons that follow, the motion is granted.

I. Background

This case centers around a promissory note and mortgage executed by Sandra Borkon ("Sandra") and her husband Jerry Borkon ("Jerry") (collectively "the Borkons") in favor of Cherry Hill National Bank (also "the Bank").[1] Jerry was an entrepreneur who owned a closely-held New Jersey automobile dealership and a painting business, among other enterprises.

---

[1] Following the inception of the relationship between Jerry and Cherry Hill National Bank, Cherry Hill was acquired by Meridian Bank, which was in turn acquired by Corestates Bank, N.A., which in turn was acquired by and merged into First Union National Bank. Hence, First Union is the successor-in-interest by merger to Cherry Hill National Bank, and this succession of lenders is collectively referred to as "the Bank" throughout this opinion. *See generally* Pl.'s Statement ¶ 3, at 2 (delineating this succession of mergers and acquisitions).

See Pl. Sandra Borkon's Statement of Undisputed Facts in Support of Her Motion for Summary Judgment ("Pl.'s Statement") ¶ 1, at 1. Sandra was a homemaker without any independent income or any ownership stake in the businesses owned by Jerry. *See id.* ¶ 2, at 1. However, a personal financial statement prepared in 1991 indicates that, along with Jerry, she did possess a joint ownership interest in several parcels of real estate which together exceeded $3 million in value.

Some time in 1988, Louis Katz, the founder of Cherry Hill, solicited Jerry's business, and on December 31, 1988, Jerry submitted a financial statement to John Muir, a Bank representative. That statement indicated that the Borkons' joint net worth was $7,067,930, the majority of which was comprised of assets owned by Jerry alone. *See* Plaintiff Sandra Borkon's Response to First Union's Statement of Uncontested Material Facts ¶ 3 ("Pl.'s Response"), at 2. The Bank approved for Jerry an unsecured line of credit in the amount of $250,000, and on August 9, 1989, he executed a promissory note in favor of the Bank for that amount. *See* Pl.'s Statement¶ 5, at 2; Pl's Response ¶ 7, at 3.

At some point in 1990, loan officer Leonard Fedullo assumed responsibility for the Bank's relationship with Jerry. *See* Pl.'s Statement ¶ 6, at 2. On April 15, 1990, in response to a request from Fedullo, Jerry submitted to the Bank an updated personal financial statement. *See* Pl.'s Response ¶ 10, at 3; Def. First Union National Bank's Statement of Uncontested Material Facts ("Def.'s Statement") ¶ 11, at 3. This statement indicated that Jerry owned assets totaling approximately $7 million in value, of which about $3 million represented the value of real estate held jointly by the Borkons. Def.'s Statement ¶ 12, at 3; Pl.'s Response ¶ 12, at 3. Around July, 1990, Fedullo convinced Jerry to renew the loan, and on September 6, 1990, as a

consequence of his creditworthiness, the line of credit was increased to $300,000. *See* Pl.'s Statement ¶ 10, at 2. Jerry then executed a new promissory note for this increased amount. *See id.* ¶ 10, at 2-3.

This renewal process was repeated in 1991, and Jerry's personal financial statement for that year indicated that he possessed assets in his own name exceeding $4 million in value. *See* Pl.'s Statement ¶ 12, at 3. Yet unlike the two previous credit renewals, the 1991 renewal was, contrary to Fedullo's recommendation, made contingent upon Sandra's involvement. *See id.* ¶¶ 14-15, at 3. The Bank refused to renew the loan unless Sandra co-signed it, and she did so despite having neither requested nor applied for it. *See id.* ¶¶ 16-17, at 3-4. The effect of Sandra's co-signing the loan was to render assets owned jointly by the Borkons subject to attachment by the Bank as a means of satisfying the obligation created by the promissory note in the event of default.

In 1992 the renewal process was again repeated, and Jerry prepared yet another personal financial statement. *See* Pl.'s Statement ¶¶ 18-19, at 4. This document indicated that he had an annual income of $360,000, and owned in his name alone $525,000 in cash, $815,000 in marketable securities, and business interests worth in excess of $3,250,000. *See id.* ¶ 19, at 4. Yet not all of Jerry's enterprises remained viable; sales at Borkon Truckarama had declined for the third consecutive year, and Majestic Painting, one of the companies in which he had invested with money borrowed on the line of credit, had gone bankrupt. *See* Def.'s Statement ¶ 29, at 7. The financial statement also indicated that in addition to Jerry's own business endeavors, the Borkons jointly owned a significant amount of real estate, including an apartment located at 2169 Benson Street, Philadelphia, Pennsylvania (the "Benson Street" property). *See* Pl.'s Statement ¶

20, at 4. They valued this property at $150,000, and the Bank required that it be pledged to in the form of a mortgage if the loan was to be renewed for 1992. *See id.* ¶ 23, at 4. The Borkons agreed to the Bank's terms, and executed both the Benson Street mortgage and a new promissory note in the amount of $300,000. *See id.* ¶ 24, at 5.

In 1993 the line of credit was renewed, but the Bank required both that it continue to be partially secured by the Benson Street property and that it be paid down by $70,000. *See* Def.'s Statement ¶ 37, at 8. The Borkons ultimately agreed to these terms as well, and executed a final promissory note on July 22, 1993. *See id.* ¶ 38, at 8-9. Though this loan was indeed the final obligation incurred by the Borkons, the line of credit was renewed twice more, in 1994 and 1995. *See id.* ¶ 40, at 9.

In October, 1996, Jerry notified the Bank that a check-kiting scheme had been uncovered at Borkon Truckarama. On October 22, 1996, the Bank responded by informing the Borkons that on or about January 31, 1997, it would make demand upon the 1993 note. *See* Def.'s Statement ¶¶ 42-43, at 9. Such demand was actually made on February 3, 1997, and the Bank instituted the default interest rate of 15%, as authorized by the 1993 note. *See id.* ¶ 44, at 9.

On June 26, 1997, the Bank filed a complaint against the Borkons in the Court of Common Pleas in Montgomery County, Pennsylvania to collect all sums due under the 1993 promissory note. *See* Def.'s Statement ¶ 45, at 10. On September 29, 1998, the Borkons filed their first amended answer to this complaint, in which they raised several counterclaims. The fourth counterclaim sought a declaratory judgment that the Bank violated the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 *et seq.*, by requiring Sandra to sign the line of credit notes and mortgage. *See id.* ¶¶ 46-47, at 10.

On June 16, 1999, the Bank filed a complaint against the Borkons in the Court of Common Pleas in Philadelphia County, Pennsylvania to foreclose the mortgage on the Benson Street property. *See* Def.'s Statement ¶ 48, at 10. In their answer to that complaint, the Borkons asserted as an affirmative defense to the mortgage obligation the Bank's alleged violation of the ECOA. *See id.* ¶¶ 49-50, at 10-11.

Finally, on June 16, 2000 Sandra commenced the instant declaratory judgment action in response to the two state court suits brought by the Bank. She seeks a declaration that the 1993 promissory note and Benson Street mortgage are null and void due to alleged violations of the ECOA and Federal Reserve Regulation B, 12 C.F.R. § 202.7(d)(5) ("Regulation B"), and that she accordingly has incurred no obligation to the Bank under either document. *See* Def.'s Statement ¶ 51, at 11. She also seeks to have her name removed from both documents. *See* Complaint ¶ 49, at 7. The gravamen of her complaint is that at the time of the issuance of the notes and mortgage, Jerry independently met the Bank's standard of creditworthiness. *See id.* ¶ 42, at 6. Accordingly, she claims, requiring her to serve as an additional guarantor on those obligations was impermissible under both the ECOA and Regulation B, which prohibit lending institutions from requiring one spouse to personally guarantee credit extended to an independently creditworthy spouse. *See id.* ¶ 45, at 7; *Roseman v. Premier Financial Services - East*, 1997 WL 570919, at *2 (E.D. Pa. Sept. 3, 1997) ("[A] person who was improperly compelled to guarantee her or his spouse's loan may assert violation of the ECOA as a defense against a creditor's attempts to seek collection from the guarantor." (citing *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 32 (3d Cir. 1995))).

First Union contends that none of the actions taken by the Bank violated the

ECOA or Regulation B, and that even if these provisions were transgressed, the instant action is barred by the ECOA's two year statute of limitations. First Union further argues that the Anti-Injunction Act, 28 U.S.C. § 2283, bars this court from granting the relief desired by Sandra because such would be tantamount to imposing a stay upon the Philadelphia and Montgomery County proceedings as to her.

Both parties to this action previously have moved for summary judgment. On March 9, 2001 I denied in its entirety the plaintiff's summary judgment motion, and on March 12, 2001 I denied that of the defendant except with reference to the application of the Anti-Injunction Act, on which I reserved judgment. The purpose of today's decision is to resolve the issue of the Anti-Injunction Act's application in this case, and to determine whether the Bank is entitled to summary judgment on this issue. I conclude that it is.[2]

II Legal Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The court is not to resolve disputed factual issues, but rather should determine whether there are genuine, material factual issues that require a trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). In order to determine whether summary judgment is appropriate in this particular case, all of the facts delineated above are

---

[2] Because I find that the Anti-Injunction Act precludes me from entering the declaratory judgment sought by Sandra, I do not reach any conclusion regarding the merits of her claims concerning the ECOA and Regulation B or First Union's contention regarding the statute of limitations.

stated in the light most favorable to the plaintiff as the non-moving party.[3] *See Saldana v. Kmart Corp.*, ___ F.3d ___, 2001 WL 826107, at *2 (3d Cir. July 23, 2001).

III. Discussion

The Anti-Injunction Act ("the Act") provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by [an a]ct of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The Act applies "when (1) a court of the United States (2) grants an injunction (3) to stay a proceeding (4) in a state court." *United States Steel Corp. Plan for Employee Ins. Benefits v. Musiko*, 885 F.2d 1170, 1175 (3d Cir. 1989) (citing 17 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4222 (1988)). While both parties agree that the first element is plainly applicable here, they disagree as to the satisfaction of the remaining conditions to the Act's application.

Sandra argues repeatedly that she is not asking this court to "enjoin" the Philadelphia or Montgomery County court proceedings, but rather has brought this parallel proceeding seeking a declaration of the illegality of the Bank's actions. Yet as explicitly stated by the United States Court of Appeals for the Third Circuit, "the prohibition of section 2283 is not 'an anachronistic, minor technicality, easily avoided by mere nomenclature or procedural sleight of hand.'" *Musiko*, 885 F.2d at 1175 (quoting *Texas Employers' Ins. Ass'n v. Jackson*, 862 F.2d 491, 505 (5th Cir. 1988), *cert. denied*, 490 U.S. 1035 (1989)). Accordingly, the Act's application does not pivot upon whether the relief sought in a federal action is labeled by the

[3] Here, factual accounts have been taken from First Union's statement of uncontested facts only where Sandra Borkon has explicitly agreed with them in her response to that statement.

plaintiff as "injunctive." Put differently, the court's concern is substantive, not semantic; if the effect of a federal court judgment would be to "obstruct[] and interfer[e] with the state courts' process," then it "has the effect of a stay within the meaning of the [Act]." *Id.*

The validity of this doctrine has been repeatedly confirmed within the context of declaratory judgments. *See, e.g.*, *Musiko*, 885 F.2d at 1175 ("Where, as here, declaratory relief would produce the same effect as an injunction, a declaratory judgment is barred if section 2283 would have prohibited an injunction.") (citations omitted); *Bledsoe v. Fulton Bank*, 940 F. Supp. 804, 807 (E.D. Pa. 1996); James Wm. Moore et al., Moore's Federal Practice § 121.03[2] (3d ed. 2001) ("[T]he Anti-Injunction Act prohibits any federal court order that, though not specifically enjoining a state proceeding, would decide or preempt a pending state proceeding.").

Given these doctrinal principles, the question becomes whether the declaratory relief sought by Sandra would have the effect of deciding or staying the Philadelphia and Montgomery County proceedings. As indicated in *Bledsoe*, "all doubts are to be resolved in favor of allowing the state court action to proceed." *Id.* (citing *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Eng'rs.*, 398 U.S. 281, 296-97 (1970)).

Here the "obstructi[on of] and interfer[ence] with the state courts' process" *Musiko*, 885 F.2d at 1175, that would result from the issuance of a declaratory judgment for Sandra would be egregious. In fact, the effect of granting this relief would be not to stay the state court proceedings, but rather to functionally terminate them as to Sandra. In fact, in her memorandum of law in opposition to the Bank's motion for summary judgment, the plaintiff herself delineates the mechanism by which this would likely transpire. In so doing, Sandra also demonstrates the predominately semantic nature of her argument against the Act's application.

She states:

> The result in *Bledsoe* and the Bank's argument misapprehend[] what will occur in the event that Sandra prevails. Sandra will not ask this Court to enjoin the state court proceeding or even to enjoin the Bank from proceeding against her in state court. Rather, Sandra will simply file a motion for summary judgment in the state courts based on res judicata. Then, based on Pennsylvania law, the Pennsylvania state courts will grant the motion. There will be no friction or other interference with the state court.

Plaintiff Sandra Borkon's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment at 18-19.

I conclude that Sandra's account of the likely chain of events, should a declaratory judgment be rendered in her favor, is probably correct, and it is for precisely this reason that such relief is barred by the Anti Injunction Act. Indeed, if the Bank violated the ECOA or Regulation B in requiring Sandra to co-sign the loan or mortgage, then it is axiomatic that her obligations under those documents would disappear. Though such a finding would not take the form of an injunction *per se*, it would leave the Philadelphia and Montgomery County courts with virtually nothing to decide as to Sandra. To so take a substantive question of law out of the hands of the state courts seems to me the epitome of interference with those tribunals.

The facts at issue in *Bledsoe* are highly apposite to those presently at bar, and I find the analysis employed in that case to be persuasive here. In that case, the defendant lending institution had extended to the plaintiff's former husband a line of credit, but insisted that the plaintiff co-sign the guaranty. After the loan went into default, the lender sought two separate state court judgments against the plaintiff under the guaranty agreement. The plaintiff responded by seeking a declaration in federal court that the bank contravened the ECOA and Regulation B by requiring that she co-sign the loan. The court held that it was barred from granting the

declaratory judgment by the Anti Injunction Act. It stated: "[d]eclaring that Defendant obtained Plaintiff's guaranty in violation of federal law would 'obstruct and interfere with the state courts' process' by effectively terminating the dispute–indeed, this is surely why Plaintiff instituted this federal action."[4] 940 F. Supp. at 808. The court concluded: "because the clear result of awarding the declaratory judgment . . . that Plaintiff seeks would so obstruct and interfere with the state court proceedings, this equitable relief is prohibited by the Anti-Injunction Act." *Id.* I find analogously in this case.[5]

Sandra raises several other arguments against the application of the Anti-Injunction Act, none of which are persuasive. For example, she makes much of the general obligation upon federal courts to exercise their jurisdiction in all but the most exceptional circumstances. While she is correct in asserting that the duty of federal courts to exercise their jurisdiction over matters falling within it is "virtually unflagging," *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans ("NOPSI")*, 491 U.S. 350, 359 (1989), no similar obligation

---

[4] In the instant matter, this purpose was stated explicitly by Sandra, as indicated above.

[5] *Thiokol Chem. Corp. v. Burlington Indus., Inc.*, 448 F.2d 1328 (3d Cir. 1971), on which Sandra relies, is not to the contrary. In that case, the court held that federal resolution of the federal questions raised in the declaratory judgment action then at bar was appropriate if and only "if the state court does not proceed in normal course to adjudicate the matter or otherwise manifests willingness to hold its hand pending federal decision on that question." *Id.* at 1332. No such willingness has been manifested by either the Philadelphia or Montgomery County courts in this case, nor has either tribunal evinced an inability or disinclination to proceed with the determination of the ECOA and Regulation B issues in "normal course." This aspect of *Thiokol* is accordingly inapposite to the facts at bar. Moreover, this is not a case where "a claim turns on a question of federal law more familiar to the federal court, and the state court would not normally determine the issue." James Wm. Moore et al., Moore's Federal Practice § 121.03[2] (3d ed. 2001). Indeed, there is no reason to believe that the Pennsylvania courts are ill-equipped to resolve questions concerning the applicability of the ECOA.

rests upon litigants to choose a federal forum for the adjudication of issues of federal law. In situations where concurrent jurisdiction over a particular matter exists in both the federal and state courts, such as is contained in the ECOA,[6] a party is free to raise that issue in either forum. As stated in *NOPSI*, "[t]he right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied." *Id.* (quoting *Willcox v. Consol. Gas Co.*, 212 U.S. 19, 40 (1909)). Yet this certainly does not mean that every federal question must necessarily be resolved by a federal court. Where a federal declaratory plaintiff already has raised her federal claims in the form of defenses in previously instituted state court proceedings, it is likely that the effect of the federal court granting the plaintiff's desired relief would be to substantially interfere with the state actions. Here, this possibility does indeed become manifest, and accordingly the Anti-Injunction Act precludes me from granting Sandra's desired declaratory judgment.

Sandra also makes several arguments as to the inappropriateness of abstention in this case. These contentions may be disposed of by simply noting that First Union does not raise abstention as a basis for summary judgment. Abstention, as an umbrella term for an amalgam of common law jurisdictional doctrines, "creates a separate and independent barrier to federal court injunctions of pending state court proceedings." Erwin Chemerinsky, Federal Jurisdiction § 11.2, at 694 (3d ed. 1999). The Anti-Injunction Act, by contrast, is a statutory mandate replete with an independent set of criteria for its applicability.

---

[6] In the ECOA Congress created such concurrent jurisdiction over equitable and declaratory judgment actions to enforce its provisions. *See* 15 U.S.C. § 1691e(c) ("Upon application by an aggrieved applicant, the appropriate United States district court *or any other court of competent jurisdiction* may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter") (emphasis added).

The two doctrines are not coextensive; for example, *Younger* abstention–the most frequently employed abstention doctrine–applies to pending state court criminal, civil enforcement and coercive administrative proceedings. *See, e.g.*, *Younger*, 401 U.S. at 41 (criminal prosecutions); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (civil enforcement proceedings); *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc*, 477 U.S. 619, 627 n.2 (1986) (coercive administrative proceedings). It does not, however, apply to private state court civil litigation. *See generally* 17A C. Wright, et al., Federal Practice and Procedure §§ 4251, at 180 (2d ed. 1988 & Supp. 1999) (noting that *Younger* abstention is limited to cases in which the state has a particularly compelling interest in enforcing its own laws in its own courts). Yet the Anti-Injunction Act is not so limited, as its mandates apply regardless of the substance of the state court proceeding. *See generally* James Wm. Moore et al., Moore's Federal Practice § 121.03[1][b] (3d ed. 2001). Although the court does not comment on the persuasiveness of Sandra's abstention arguments as applied to the case at bar, suffice it to say that they do not bear on the applicability of the Act.

Finally, Sandra is incorrect in asserting that First Union is barred by judicial estoppel from raising the Act here. Three conditions must be satisfied before judicial estoppel is applied: (1) the party to be estopped must take a position irreconcilably inconsistent with a previous position; (2) the party changes its position in bad faith, in a manner threatening to the court's authority or integrity; and (3) the use of judicial estoppel is tailored to remedy the affront to judicial authority or integrity. *See Montrose Med. Group Participating Sav. Plan v. Bulger*, 243 F.3d 773, 781 (3d Cir. 2001). Here it is plainly evident that First Union's taking of discovery, a necessary condition to the court's consideration of a summary judgment motion, is

not "irreconcilably inconsistent" with its assertion that the Act bars the issuance of a declaratory judgment. In any event, no showing of the requisite bad faith has been made, and for this reason also I find that judicial estoppel is inapplicable.

In sum, I find that no genuine issue of fact exists as to effect of granting Sandra Borkon's desired relief; such plainly would be tantamount to a termination of the Philadelphia and Montgomery County proceedings, and accordingly, is barred by the Anti-Injunction Act. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SANDRA BORKON, Plaintiff, v. FIRST UNION NATIONAL BANK, Successor in Interest by Merger to CORESTATES BANK, N.A., MERIDIAN BANK, NEW JERSEY NATIONAL BANK, and CHERRY HILL NATIONAL BANK Defendant.	: : : : : : : : : :	CIVIL ACTION NO. 00-2850

Order

And now, this _____ day of September, 2001, upon consideration of the defendant's motion for summary judgment and the attached appendix (Doc. # 11), the plaintiff's opposition (Doc. # 19), the defendant's reply (Doc. # 23), and the parties' uncontested statements of material fact and responses thereto (Docs. 14, 16, 20) it is hereby ORDERED that the defendant's motion is GRANTED. Summary judgment is ENTERED in defendant First Union's favor and against plaintiff Sandra Borkon on the basis of the Anti-Injunction Act and the plaintiff's complaint is DISMISSED.

_____

William H. Yohn, Jr., Judge